

AMENDED IN ASSEMBLY JANUARY 4, 2006

AMENDED IN ASSEMBLY APRIL 18, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 861

Introduced by Assembly Member Bass

February 18, 2005

~~An act to amend Section 480 of the Business and Professions Code, relating to professions and vocations. An act to amend Section 7403 of, and to add Sections 7308 and 7396.5 to, the Business and Professions Code, relating to barbering and cosmetology.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 861, as amended, Bass. ~~Professions and vocations: Barbering and Cosmetology:~~ licensure.

Under existing law, the State Board of Barbering and Cosmetology licenses and regulates the practice of barbering and cosmetology. Existing law authorizes the board to deny, suspend, or revoke a license for specified reasons. Existing law also requires the board in certain circumstances to provide a notice to a person that states the board's reason for denying the license, and to comply with other requirements upon denying a license to an applicant.

This bill would require the board to give specified additional information to a person who has been denied a license, and would require the board to conduct a hearing within 60 days of receiving an applicant's request for a hearing. The bill would authorize the board to issue a probationary license to an applicant, subject to specified terms and conditions. The bill would also require the board to study the effects of law, regulations, and policy that may create unnecessary barriers to employing people with criminal records, and would

require the board to report its findings to the Legislature on or before September 1, 2007.

~~Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law authorizes a board to deny licensure on certain grounds, including on the grounds that the applicant has been convicted of a crime.~~

~~This bill would exempt licenses regulated by the Bureau of Automotive Repair, by the Board of Barbering and Cosmetology, by the Cemetery and Funeral Bureau, by the Bureau of Electronic and Appliance Repair, by the Bureau of Home Furnishing and Thermal Insulation, and by the Structural Pest Control Board from the provisions authorizing the denial of licensure for conviction of a crime with respect to a conviction for a nonviolent drug possession offense or a conviction for a misdemeanor or a felony that is not a serious or violent felony, if certain other conditions are met.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 7308 is added to the Business and*
2 *Professions Code, to read:*

3 *7308. (a) The board shall study the effects of current law,*
4 *regulations, and policy related to the licensing functions of the*
5 *board that may create unnecessary barriers to employing people*
6 *with criminal records. The objective of the study shall be to*
7 *identify changes in law or board policy to help remove*
8 *unnecessary barriers to licensing due to criminal records while*
9 *protecting the safety and security of customers and the integrity*
10 *of the occupations regulated by the board. The board shall report*
11 *all of its findings to the Legislature on or before September 1,*
12 *2007.*

13 *(b) The board shall address all of the following in the study:*

14 *(1) For each of the past five years, the number of applicants,*
15 *by occupation, who produced evidence of a criminal record as*
16 *part of the licensing application process.*

17 *(2) For each of the past five years, an analysis of the age and*
18 *severity of the offenses produced by the applicants, including the*

1 *number of applicants whose criminal records were limited to*
2 *nonviolent drug offenses and misdemeanors.*

3 *(3) For each of the past five years, the number of applicants*
4 *whom the board asked to supply additional information related*
5 *to their criminal record compared to the number of applicants*
6 *who supplied the requested information.*

7 *(4) For each of the past five years, the number of applicants*
8 *who supplied evidence of rehabilitation supplementing their*
9 *applications, compared to the number of those applicants who*
10 *were denied a license.*

11 *(5) The number of applicants who received a notice of denial*
12 *for reasons related to their criminal record, compared with the*
13 *number who appealed the determination, and the number whose*
14 *appeals resulted in reversal or other modification of the decision,*
15 *including a probationary license.*

16 *(6) For each of the past five years, the criteria applied by the*
17 *board to determine whether an applicant's criminal record*
18 *substantially related to the requested license, including the*
19 *specific categories of disqualifying offenses and any criteria*
20 *related to the age and severity of disqualifying offenses.*

21 *(7) The criteria applied by the board to determine whether an*
22 *applicant has been sufficiently rehabilitated, including an*
23 *analysis of the factors that most often lead to a determination of*
24 *rehabilitation resulting in licensing.*

25 *(8) For each of the past five years, the average length of time*
26 *that an appeal is pending relative to the date of the hearing*
27 *request and final decision.*

28 *(9) For each of the past five years, the number and proportion*
29 *of appeals pending longer than 30 days and longer than 100 days*
30 *since the time of the hearing request.*

31 *SEC. 2. Section 7396.5 is added to the Business and*
32 *Professions Code, to read:*

33 *7396.5. (a) The board may, in its sole discretion, issue a*
34 *probationary license to an applicant subject to terms and*
35 *conditions deemed appropriate by the board, including, but not*
36 *limited to, the following:*

37 *(1) Continuing medical, psychiatric, or psychological*
38 *treatment.*

39 *(2) Ongoing participation in a specified rehabilitation*
40 *program.*

1 (3) *Abstention from the use of alcohol or drugs.*

2 (4) *Compliance with all provisions of this chapter.*

3 (b) *The board may modify or terminate the terms and*
4 *conditions imposed on the probationary license upon receipt of a*
5 *petition from the applicant or licensee.*

6 SEC. 3. *Section 7403 of the Business and Professions Code is*
7 *amended to read:*

8 7403. (a) *The board may revoke, suspend, or deny at any*
9 *time any license required by this chapter on any of the grounds*
10 *for disciplinary action provided in this article. The proceedings*
11 *under this article shall be conducted in accordance with Chapter*
12 *5 (commencing with Section 11500) of Part 1 of Division 3 of*
13 *Title 2 of the Government Code, and the board shall have all the*
14 *powers granted therein.*

15 (b) *The board may deny a license to an applicant on any of the*
16 *grounds specified in Section 480.*

17 (c) *In addition to the requirements provided in Sections 485*
18 *and 486, upon denying a license to an applicant, the board shall*
19 *provide a statement of reasons for the denial that does the*
20 *following:*

21 (1) *Evaluates evidence of rehabilitation submitted by the*
22 *applicant, if any.*

23 (2) *Provides the board's criteria relating to rehabilitation,*
24 *formulated pursuant to Section 482, that takes into account the*
25 *age and severity of the offense, and the evidence relating to*
26 *participation in treatment or other rehabilitation programs.*

27 (d) *Notwithstanding Section 487, the board shall conduct a*
28 *hearing within 60 days of receiving an applicant's request for a*
29 *hearing.*

30 (e) *In any case in which the administrative law judge*
31 *recommends that the board revoke, suspend or deny a license, the*
32 *administrative law judge may, upon presentation of suitable*
33 *proof, order the licensee to pay the board the reasonable costs of*
34 *the investigation and adjudication of the case. For purposes of*
35 *this section, "costs" include charges by the board for*
36 *investigating the case, charges incurred by the office of the*
37 *Attorney General for investigating and presenting the case, and*
38 *charges incurred by the Office of Administrative Hearings for*
39 *hearing the case and issuing a proposed decision.*

40 ~~(e)~~

(f) The costs to be assessed shall be fixed by the administrative law judge and shall not, in any event, be increased by the board. When the board does not adopt a proposed decision and remands the case to an administrative law judge, the administrative law judge shall not increase the amount of any costs assessed in the proposed decision.

~~(d)~~

(g) The board may enforce the order for payment in the superior court in the county where the administrative hearing was held. This right of enforcement shall be in addition to any other rights the board may have as to any licensee directed to pay costs.

~~(e)~~

(h) In any judicial action for the recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

~~(f)~~

(i) Notwithstanding any other provision of law, all costs recovered under this section shall be deposited in the board's contingent fund as a scheduled reimbursement in the fiscal year in which the costs are actually recovered.

~~SECTION 1. Section 480 of the Business and Professions Code is amended to read:~~

~~480. (a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:~~

~~(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.~~

~~(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself, herself, or another, or substantially injure another; or~~

~~(3) Done any act which, if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.~~

1 The board may deny a license pursuant to this subdivision only
2 if the crime or act is substantially related to the qualifications,
3 functions or duties of the business or profession for which
4 application is made.

5 (b) ~~The Bureau of Automotive Repair, the Board of Barbering~~
6 ~~and Cosmetology, the Cemetery and Funeral Bureau, the Bureau~~
7 ~~of Electronic and Appliance Repair, the Bureau of Home~~
8 ~~Furnishing and Thermal Insulation, and the Structural Pest~~
9 ~~Control Board may not deny a license pursuant to subdivision (a)~~
10 ~~on the basis of any of the following:~~

11 (1) ~~A conviction for a nonviolent drug possession offense, as~~
12 ~~defined in subdivision (a) of Section 1210 of the Penal Code, or~~
13 ~~a misdemeanor, when the person convicted is free of any~~
14 ~~sentence, suspended sentence, probation or parole, and does not~~
15 ~~have any felony or misdemeanor charges pending.~~

16 (2) ~~A conviction for a felony, other than a felony under~~
17 ~~subdivision (a) of Section 1210 of the Penal Code, that is not a~~
18 ~~serious felony as defined in Section 1192.7 of the Penal Code or~~
19 ~~a violent felony as defined in Section 667.5 of the Penal Code,~~
20 ~~when the person convicted has been free of any sentence,~~
21 ~~suspended sentence, probation, or parole for a period of at least~~
22 ~~two years and does not have any felony or misdemeanor charges~~
23 ~~pending.~~

24 (c) ~~Notwithstanding any other provision of this code, no~~
25 ~~person shall be denied a license solely on the basis that he has~~
26 ~~been convicted of a felony if he or she has obtained a certificate~~
27 ~~of rehabilitation under Section 4852.01 and following of the~~
28 ~~Penal Code or that he or she has been convicted of a~~
29 ~~misdemeanor if he or she has met all applicable requirements of~~
30 ~~the criteria of rehabilitation developed by the board to evaluate~~
31 ~~the rehabilitation of a person when considering the denial of a~~
32 ~~license under subdivision (a) of Section 482.~~

33 (d) ~~A board may deny a license regulated by this code on the~~
34 ~~ground that the applicant knowingly made a false statement of~~
35 ~~fact required to be revealed in the application for the license.~~